

business information submitted in writing shall clearly mark each page “BUSINESS CONFIDENTIAL” at the top.

(c) The Committee may deny a request that it exempt from public inspection any particular business information if it determines that such information is not entitled to exemption under paragraph (a) of this section. In the event of such denial, the party submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw his submission.

PART 2004—FREEDOM OF INFORMATION POLICIES AND PROCEDURES

ORGANIZATION

Sec.

2004.1 In general.

2004.2 Authority and functions.

2004.3 Organization.

PROCEDURES

2004.4 Availability of records.

2004.5 Accessing records without request.

2004.6 Requesting records.

COSTS

2004.7 Definitions.

2004.8 Fees in general.

2004.9 Fees for categories of requesters.

2004.10 Other charges.

2004.11 Payment and waiver.

AUTHORITY: 5 U.S.C. 552; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987.

SOURCE: 73 FR 35063, June 20, 2008, unless otherwise noted.

ORGANIZATION

§ 2004.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act, 5 U.S.C. 552, as amended (FOIA). This regulation should be read in conjunction with the FOIA.

§ 2004.2 Authority and functions.

The Office of the United States Trade Representative (USTR) negotiates directly with foreign governments to conclude trade agreements, and resolve trade disputes, and participates in

global trade policy organizations. USTR consults with governments, business groups, legislators, and public interest groups to obtain their views on trade issues and explain the President's trade policy positions. The general functions of USTR, as provided by statute, are to develop and coordinate international trade and direct investment policy, advise and assist the President, represent the United States in international trade negotiations, and provide policy guidance to federal agencies on international trade matters. The United States Trade Representative, a cabinet officer, serves as a vice chairman of the Overseas Private Investment Corporation, a Board member of the Millennium Challenge Corporation, a non-voting member of the Export-Import Bank, and a member of the National Advisory Council on International Monetary and Financial Policies.

§ 2004.3 Organization.

USTR's main office is located in Washington, DC. It also maintains a mission in Geneva, Switzerland.

PROCEDURES

§ 2004.4 Availability of records.

USTR's publicly accessible records are available through USTR's public reading room or its Web site. USTR also provides records to individual requesters in response to FOIA requests. USTR generally withholds predecisional, deliberative documents and classified trade negotiating and policy documents under 5 U.S.C. 552(b).

§ 2004.5 Accessing records without request.

(a) *Public reading room.* USTR maintains and makes available for public inspection and copying USTR records pertaining to matters within the scope of 5 U.S.C. 552(a)(2), as amended. Most records in USTR's public reading room comprise responses to FEDERAL REGISTER notices that USTR has issued. USTR's public reading room is located at 1724 F Street, NW., Washington, DC. Access to the reading room is by appointment only. Contact USTR's FOIA Officer at (202) 395-6186 to set up an appointment.

(b) *Electronic resources.* Certain USTR records, including press releases and other public issuances, are available electronically from USTR's homepage at <http://www.ustr.gov>. USTR encourages requesters to visit its Web site before making a request for records under § 2004.6.

§ 2004.6 Requesting records.

(a) *Written requests required.* For records not available as described under § 2004.5, requesters wishing to obtain information from USTR must submit a written request to USTR's FOIA Officer. Requests should be addressed to FOIA Officer, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. As there may be delays in mail delivery, it is advisable to send request via facsimile to (202) 395-9458.

(b) *Contents of requests.* Requests shall be as specific as possible and shall reasonably describe the records sought so that the records can be located with a reasonable amount of effort. The request should identify the desired record or reasonably describe it and should include information such as the date, title or name, author, recipient, and subject matter of the record.

(c) *Response to requests—(1) Processing.* The FOIA Officer shall ordinarily determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled one time if the FOIA Officer requests information from the requester or if additional time is necessary to clarify issues with the requester regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall normally include with the notice both the requested records and a copy of the decision.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the informa-

tion was withheld. The notice shall also describe the procedure for filing an appeal.

(2)(i) *Expedited processing.* At the time a requester submits an initial request for records the requester may ask the FOIA Officer in writing to expedite processing of the request. The request for expedited processing must be accompanied by a written statement, true and correct to the best of the requester's knowledge and belief, explaining why expedited processing is warranted. The FOIA Officer shall generally grant requests for expedited processing of requests for records, and appeals of denials under paragraph (d)(2) of this section, whenever the FOIA Officer determines that:

(A) Failure to obtain the requested records on an expedited basis could reasonably pose an imminent threat to a person's life or physical safety; or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about government activity that is the specific subject of the FOIA request.

(ii) The FOIA Officer shall ordinarily decide within ten days after receiving a request for expedited processing whether to grant it and shall notify the requester of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall process the request as soon as practicable. If the FOIA Officer denies a request for expedited processing, USTR shall act expeditiously on any appeal of the denial.

(3) *Extension for unusual circumstances—(i) In general.* If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays, and Federal holidays) the time limits described in paragraph (c)(1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination.

(ii) *Additional procedures.* The FOIA Officer shall provide written notice to the requester if the FOIA Officer decides that the determination cannot be

§ 2004.7

15 CFR Ch. XX (1–1–12 Edition)

made within the time limit described in paragraph (c)(3)(i) of this section. The notice shall afford the requester an opportunity to limit the scope of the request to the extent necessary for the FOIA Officer to process it within that time limit or an opportunity to arrange a longer period for processing the request.

(d) *Appeals*—(1) *Initiating appeals*. Requesters not satisfied with the FOIA Officer's written decision may request USTR's FOIA Appeals Committee to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and shall be addressed to the FOIA Appeals Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. As there may be delays in mail delivery, it is advisable to FAX appeals to (202) 395-9458. An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Committee should sustain the appeal.

(2) *Appeal decisions*. The Committee shall ordinarily decide the appeal within 20 working days from the date it receives the appeal. If the Committee denies the appeal in full or part, the Committee shall promptly notify the requester in writing of the Committee's decision and the provisions for judicial review. If the Committee sustains the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that USTR assesses under §§ 2004.8 through 2004.10.

COSTS

§ 2004.7 Definitions.

For purposes of these regulations:

(a) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) *Direct costs* means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of em-

ployees who perform the work and costs of conducting large-scale computer searches.

(c) *Duplicate* means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(g) *Review* means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(h) *Search for* means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 2004.8 Fees in general.

USTR shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. USTR may assess charges for time spent searching for records even if USTR fails to locate the records or if the records are located and determined to be exempt from disclosure. In general, USTR shall apply the following fee schedule, subject to §§ 2004.9 through 2004.11:

(a) *Manual searches*. Time devoted to manual searches shall be charged on

the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of \$.15 per page. For other types of copies such as disks or audio visual tapes, USTR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed \$25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in §2004.6(c)(1) shall be deemed to begin when the FOIA Officer receives the request.

(e) *Advance payments required.* The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(1) The FOIA Officer estimates that the fee will exceed \$250; or

(2) The requester has previously failed to pay a fee in a timely fashion.

When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in §2004.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* USTR shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) After December 31, 2008, USTR fails to comply with any time limit under the Freedom of Information Act for responding to a request for records where no unusual or exceptional circumstances apply.

§ 2004.9 Fees for categories of requesters.

USTR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, USTR shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational institutions.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* USTR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 2004.10 Other charges.

USTR may apply other charges, including the following:

(a) *Special charges.* USTR shall recover the full cost of providing special services, such as sending records by express mail, to the extent that USTR elects to provide them.

(b) *Interest charges.* USTR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

§ 2004.11

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 2004.11 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requestor of the applicable fees, the Officer shall inform the requestor of where to send the payment.

(b) *Waiver.* USTR may waive all or part of any fee provided for in §§ 2004.8 through 2004.9 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

PART 2005—SAFEGUARDING INDIVIDUAL PRIVACY

Sec.

2005.0 Purpose and scope.

2005.1 Rules for determining if an individual is the subject of a record.

2005.2 Requests for access.

15 CFR Ch. XX (1–1–12 Edition)

2005.3 Access to the accounting of disclosures from records.

2005.4 Requests for copies of records.

2005.5 Requests to amend records.

2005.6 Request for review.

2005.7 Schedule of fees.

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 48331, Oct. 14, 1975, unless otherwise noted.

§ 2005.0 Purpose and scope.

The purpose of these regulations is to provide certain safeguards for an individual against the invasion of his or her personal privacy by the Office of the Special Representative for Trade Negotiations (hereinafter frequently referred to as “STR”). These regulations are promulgated pursuant to the requirements for all Federal Agencies contained in 5 U.S.C. 552a(f).

§ 2005.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by STR contains a record pertaining to them should address their inquiries to the Administrative Officer, Office of the Special Representative for Trade Negotiations, Washington, DC 20506. The written inquiry should contain a specific reference to the system of records maintained by the STR listed in the STR Notice of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of STR systems of records subject to the Privacy Act will be published in the FEDERAL REGISTER and copies of the notices will be available upon request to the Administrative Officer when so published. A compilation of such notices will also be made and published by the Office of the Federal Register, in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should also contain sufficient identifying information to allow STR to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the identification is insufficient to insure disclosure to the individual to whom the information pertains in